

IN THE MATTER OF The Public Order Emergency Commission
Established by Order in Council 2022-0392 under the *Inquiries Act*, RSC 1985, c I-11
The Honourable Paul S. Rouleau, Commissioner

AFFIDAVIT OF DUBI KANENGISSE

I, **DUBI KANENGISSE**, of the City of Vaughan, **AFFIRM THE FOLLOWING:**

1. I am a Senior Advisor, Strategic Analysis and Governance, to the Toronto Police Services Board, and have been since December 10, 2019. As such, I have personal knowledge of the facts and matters hereinafter deposed to, save and except for information imparted to me by other people, in which case, I believe the source of the information to be reliable and the information to be true.
2. Commission counsel for the Public Order Emergency Commission (“Commission”) requested that the Toronto Police Services Board prepare an Institutional Report under Rule 51 of the Commission’s Revised Rules of Practice and Procedure.
3. The Office of the Toronto Police Services Board (the “Board Office”) prepared the requested institutional report and provided a copy of said Institutional Report to the Commission on October 12, 2022, a copy of which is attached as **Exhibit A**.
4. While I do not have direct knowledge of all aspects of the report, I am advised that it was prepared with information and input from various individuals with relevant knowledge within the Board Office. As such, the Toronto Police Services Board therefore considers the attached institutional report to be accurate and complete.

AFFIRMED BEFORE ME remotely by)
videoconference from Toronto, Ontario)
(location of affiant) to Mono, Ontario)
(location of lawyer administering oath),)
this 2nd day of November, 2022)



Philip Chan (LSO No. 68681S)
A Commissioner, etc.

Dubi Kanengisser
Dubi Kanengisser (Nov 2, 2022 14:07 EDT)

DUBI KANENGISSE

This is **Exhibit "A"** to the affidavit of **Dubi Kanengisser**
sworn by videoconference
from Toronto, Ontario (location of affiant)
to Mono, Ontario (location of lawyer administering oath)
on this **2nd day of November, 2022**



A Commissioner, etc.

Philip Chan (LSO No. 68681S)



The Toronto Police Services Board and the Toronto “Freedom Convoy”: Applying the Lessons of the Morden Report

Toronto Police Services Board

Institutional Report submitted to the Public Order Emergency Commission

October 12, 2022

Ontario's *Police Services Act*

1. The *Police Services Act*, R.S.O. 1990, c. P.15 (the "*PSA*") and its regulations govern policing in Ontario.
2. As is clear from its declaration of principles, the *PSA* is informed by certain fundamental propositions. They include the need to ensure safety and security, the importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and Ontario's *Human Rights Code* and the need for community representation in policing. Those principles are reflected in the governance structure for policing, which ensures independent, civilian governance and oversight of police services in Ontario. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 1.
3. The *PSA* creates the municipal police services board and invests it with a governance and oversight mandate in respect of the municipal police service. For more populous municipalities like Toronto, the police services board is composed of the head of the municipal council (or, if the head chooses not to be a member of the board, another member of council appointed by resolution of the council), two members of council appointed by resolution of council, one person appointed by council (who is not a member of council or an employee of the municipality), and three persons appointed by the Lieutenant Governor in Council. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 27.
4. Police services boards in Ontario are responsible for the provision of adequate and effective police services in their respective municipalities. This entails the police services board working in conjunction with the chief of police to ensure a municipality

receives the level and standard of policing prescribed by law, while being driven and guided by local objectives and priorities. The board and chief can best achieve their shared goal of effective community-centered policing by working closely with local residents, organizations and stakeholders, as well as different orders of government. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 31; and O. Reg. 3/99: *Adequacy and Effectiveness of Police Services*.

5. A police services board is responsible for determining, in consultation with the chief of police, the objectives and priorities of the police force. Those objectives and priorities are articulated in a business plan that is prepared every three years. Boards are also responsible for establishing policies for the effective management of their municipal police force. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 31; and O. Reg. 3/99: *Adequacy and Effectiveness of Police Services*, s. 30.

6. A police services board recruits and appoints the chief of police and is responsible for directing the chief and monitoring their performance. Police services boards are also the employers of each police officer within a police force. The board appoints the members of the police force, engages in collective bargaining with police bargaining units and is the employer in relation to other labour processes. The board is the legal entity responsible for contractual and other legal purposes. The board also sets the budget for the police service. See *Police Services Act*, R.S.O. 1990, c. P.15, ss. 30, 31 and 39.

7. While the police services board may direct the chief of police, it is specifically precluded from giving any orders to other individual members of the police force. Police

services boards are also specifically precluded by the *PSA* from directing the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 31 (3) and (4).

8. Under the *PSA*, it is the duty of the chief of police to administer the police force and oversee its operations in accordance with the objectives, priorities and policies established by the police services board. The day-to-day operation of the police force and specific operational decisions and the deployment of police resources fall within the chief of police's exclusive purview. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 41 and s. 31 (3) and (4).

9. Historically, the division of policy and operational roles between the police services board and the chief of police led to a somewhat entrenched hands-off approach by Ontario police services boards to the governance and oversight of police operations or operational issues, including in relation to large scale events and other important operations. The Toronto Police Services Board and the Toronto Police Service have worked hard in the wake of judicial inquiries and other reviews of police governance to cast off this historical approach and develop a modern approach.

The Role of a Police Services Board in Organizationally Significant Events/Operations/Issues

10. The police services board's role in major events/operations/issues has been closely considered by the Honourable John W. Morden and the Honourable Gloria J. Epstein in their reports arising from their reviews of major Toronto police operations,

respectively the *Independent Civilian Review into Matters Relating to the G20 Summit* (the “*Morden Report*”) and the *Missing and Missed* report inquiring into the Bruce McArthur case and Toronto police missing persons investigations more generally. Justices Morden and Epstein share the view that in order to properly discharge its statutory governance and oversight role, a police services board needs to receive adequate information from the chief of police—including detailed operational information, where necessary. Justices Morden and Epstein highlight that having adequate operational information is particularly important when a “critical point” has been identified.

11. The concept of a “critical point” originates with Justice Morden and is further explored by Justice Epstein. A “critical point” arises when a police service is engaged in planning for a major operation, event or issue—one that is organizationally-significant and requires Command-level approval. In Toronto, these are sometimes called “corporate events”—events/issues that affect the corporation or organization as a whole, as opposed to events/issues that only impact a single police division or unit. Where a “critical point” is identified, Justices Morden and Epstein suggest that collaboration and information exchange between a police services board and a chief of police is especially important for them to fulfill their respective and complementary roles in advance of, and during, a major event, operation or issue.

12. This open “information exchange” was identified as crucial by Justices Morden and Epstein to the board’s governance and oversight during “critical points” and to civilian oversight more generally. It also requires that police services boards and chiefs of police understand the limits of their respective responsibilities and jurisdiction. Boards

and chiefs have to be ever mindful and respectful of their respective, but complementary, roles.

13. Importantly, the confidentiality provisions of the *PSA* and the oaths of office taken by board members and the board's professional staff provide necessary safeguards to facilitate the free flow of information, including any sensitive or operational information that can assist the board in understanding the "critical point", as well as the rationales animating any operational plans or approach meant to address it. See *Morden Report* at pp. 88-89.

14. Depending on the nature of the major event, operation or issue that triggered the "critical point", a board might be differently engaged. It might do any or all of the following:

- a. Review and decide the "objectives, priorities and policies" meant to govern the approach to the "critical point".
- b. Evaluate whether the resources required to handle the event, operation or issue are adequate and whether further or specific resources are required.
- c. Ensure that the police service has an adequate plan for policing the major event or operation or addressing the major issue (including contingency plans), while still maintaining general continuity in policing operations and adequate policing within its jurisdiction.

- d. Ask the chief of police questions and raise concerns that probe the adequacy and effectiveness of the intended plan for the event, issue or operation.
- e. Ensure that the legal infrastructure for any legal matters is in place or is put in place (e.g. entering into legal agreements with companies, or with other police services in the event specific or additional resources are required to deliver adequate and effective policing during the event, issue or operation).
- f. Determine whether any board policies should be revised or new policies put in place to ensure proper governance of the event, issue or operation.
- g. Make non-binding recommendations (being ever mindful of the chief of police's exclusive purview in directing operations and the specific proscription against directing the chief of police in relation to specific operations or the day-to-day operation of the police service).
- h. Ensure effective communication with the public and engagement with key stakeholders about the event, operation or issue.

See *Morden Report* at pp. 98-99.

15. As per Justices Morden and Epstein, once a board receives the necessary information to fully appreciate and understand a “critical point”, it should perform its role by reviewing and/or determining the objectives and priorities for the event, operation or issue and ensure that the event, operation or issue has the benefit of an adequate

policy framework. A board should also satisfy itself that the necessary components are in place to properly govern the delivery of police services to address a major event, operation or issue. See *Morden Report* at pp. 7-8 and 85-100; and *Missing and Missed* at pp. 33-60.

16. The “information exchange” facilitated by a proper consultation protocol ensures that policy vacuums do not develop that could compromise the board’s general objectives and priorities. The “information exchange” also permits a proper review of operational plans and recommendations (but not direction) by a board where a particular aspect of an operational plan is inconsistent with legal requirements or community norms and values. See *Morden Report* at pp. 7-8 and 84-100.

17. To be clear, a police services board should not and cannot direct a chief of police with respect to the specific operational decisions that are required to manage a major event, operation or issue. While the mission, objective and priorities of the major event, operation or issue—and associated plans—are brought to the attention of and reviewed by the board, the *PSA* and common law dictate that the chief of police has the latitude and autonomy to develop and execute operations, commit and direct resources as they see fit, and manage the event, operation or issue based on evolving circumstances. See *Morden Report* at pp. 7-8 and 84-100; and *Missing and Missed* at pp. 33-60.

18. The “information exchange” contemplated by Justices Morden and Epstein should continue for the duration of a “critical point” with adjustments to the volume and flow of information based on evolving circumstances and any changes to priorities, objectives or plans. To that end, a police services board should establish

processes/practices or a protocol for “critical points” that ensure it has access to the information necessary to fulfil its role, including from operational briefings and updates, as well as regular contact with the chief of police and their office. Such an approach ensures that the board is made aware of any significant information as a “critical point” unfolds, and can act as needed in the event additional or different governance measures are needed. See *Morden Report* at pp. 7-8 and 84-100; and *Missing and Missed* at pp. 33-60.

19. Of course, the means and manner of the “information exchange” will depend on the particulars of any given police services board, police service and the municipality. The means of achieving the proper “information exchange” will be dictated, in part, by the processes, policies, and circumstances (e.g. location, size, resources, etc.) unique to each police services board and will, no doubt, differ from board to board. Applying the lessons of the *Morden Report* and *Missing and Missed*, however, a board should ensure that appropriate information exchange mechanisms are in place to allow a board to fulfill its governance and oversight role when a “critical point” arises.

Information Exchange in the Time of the “Freedom Convoy”

20. It was determined that the “Freedom Convoy” was a “critical point”, and applying the lessons of the *Morden Report* and *Mission and Missed*, Chief Ramer and Mr. Ryan Teschner, the Board’s Executive Director and Chief of Staff, contemplated and planned for greater informational co-ordination, including the integration of a Board representative into key centers of real-time information delivery.

Ongoing and Real-time Information Exchange

21. An Executive Management Table was initiated by the Service to facilitate co-ordination between the City of Toronto's many divisions and the police. The Executive Management Table served as a center for co-ordination and place for co-ordinating entities to receive information through presentations by the Chief and Emergency Management and Public Order personnel. In addition to City and Service representatives, Mr. Teschner sat on the Executive Management Table as the Board's representative.

22. The Board's representation on the Executive Management Table contributed to an effective "information exchange" that was crucial to the proper governance of this (or any other) "critical point".

23. To that same end, the Board's Executive Director and Chief of Staff was invited by the Chief to attend the Service's Executive Command Centre. The presence of a Board representative in the command centre allowed ongoing Board access to operational briefings and updates (often in real time), and facilitated Board contact with the Chief and Chief's Office, as appropriate.

24. The Executive Management Table and Executive Command Centre operated through both the earlier convoy activities of February 5, 2022, and those that occurred on February 11-12, 2022. The Board received regular updates through its representation on the Executive Management Table and presence in the Executive Command Centre, as well as through ongoing direct communication between the Chief of Police and the Board's Executive Director and Chief of Staff. Those updates were

relayed to the Board, allowing for an ongoing assessment of whether there was any need for the Board to engage its governance function to address emerging issues. Ultimately, this was not necessary. The governance framework in place was deemed appropriate and sufficient as the events unfolded.

25. Board representation on the Executive Management Table and its presence in the Executive Command Centre not only ensured Board access to real-time information for this “critical point”, it also facilitated ongoing oversight of this major event. First, having access to real-time information allowed the Board, through its representative on the Executive Management Table and Executive Command Centre, to make ongoing and independent assessments of any further governance needs (e.g. priority and objective amendments, policy guidance or recommendations). Second, having access to real-time information through these means allowed the Board to receive regular, unfiltered and independent updates from Board staff as events unfolded. This coordination between the Service and the Board and transparency from the Chief strongly contributed in this case to a healthy “information exchange” between the Board and Service, which ultimately contributed to the successful oversight of this “critical point”.

Special Meeting of the Board

26. In addition to instituting processes to facilitate ongoing and real-time information sharing, the Chief and Board considered the need for a special meeting of the Board. Ultimately, the Board’s Chair decided the circumstances warranted one.

27. A special confidential meeting was held on February 10, 2022, to address this ongoing and evolving “critical point”. The purpose of the meeting was for the Board to:

- a. Directly receive and review the most up-to-date information, including detailed information about the risks identified for Toronto and the operational plans developed for addressing continued Toronto “Freedom Convoy” activity.
- b. Understand the plans and resources in place to address the major event/operation and be assured that they were adequate to fulfil the priorities and objectives for this major event/operation.
- c. Assess whether the planning provided for continued adequate and effective policing of Toronto generally during the ongoing major event/operation.

28. All of the Board’s members attended the meeting virtually. The Chief and other presenters from the Service were in attendance, as was the Board’s Executive Director and Chief of Staff, the Board’s other professional staff, and legal counsel to the Board.

29. The meeting was also attended by a Police Services Advisor from Ontario’s Ministry of the Solicitor General. The Police Services Advisor attended to observe and ensure that the Ministry received information necessary to facilitate continued provincial support of policing operations in and around Toronto.

30. At the beginning of the meeting, the Board’s Executive Director provided a brief outline of the key principles associated with the Board’s governance role and responsibilities at a “critical point,” as well as the legal parameters and restrictions applicable to the exercise of the Board’s functions. The Chief and other Service

members thereafter provided the Board with an operational briefing and answered questions from Board members and the Executive Director. The briefing, questions from the Board and discussions between the Board and Chief/Service covered the following areas:

- a. Key context for the major event/operation, including an overview of any known elements of hate and/or terrorism.
- b. Priorities and objectives for the major event/operation.
- c. Confirmation that Board policies and existing legal authority provided the adequate policy framework for the major event/operation.
- d. Whether the Service required any specific Board approval associated with the planned operations.
- e. The adequacy of the Service's and other resources for handling the major event/operation (including City of Toronto and other police service resources), and whether there was a need for any contribution agreements.
- f. The command and control approach for the major event/operation.
- g. The adequacy of general policing services throughout the City of Toronto during the major event/operation.

- h. Public and stakeholder communications prior to and during the major event/operation.

31. At the meeting, the Board approved a motion authorizing the execution of any urgent and necessary contribution agreements with other police services. These were agreements that the Chief of Police might deem necessary and urgent to secure assistance from other police services in order to ensure the provision of adequate and effective policing in Toronto for the duration of the major event/operation.

32. Following the meeting, the Board issued a public statement noting that it was “briefed on the details of the operational plan, including the priorities and objectives for the operation, and had opportunities to ask questions of the Chief and obtain further information”. The statement also noted that the “Board is supportive of Chief Ramer’s and the Service’s plan, and the extensive work that is underway to provide adequate and effective policing services this weekend”. A copy of this statement is attached as **Exhibit “A”**.



TORONTO POLICE SERVICES BOARD BRIEFED ON TORONTO POLICE SERVICE'S OPERATIONAL PLAN FOR ANTICIPATED WEEKEND PROTESTS



Today, the Board held a Special Confidential Board Meeting for the Chief to brief the Board on this weekend's anticipated "Freedom Convoy." Board Members were briefed on the details of the operational plan, including the priorities and objectives for the operation, and had opportunities to ask questions of the Chief and obtain further information.

The requirement for information-sharing is triggered in the case of a major event/operation or organizationally significant issue. The anticipated "Freedom Convoy" planned for this weekend meets this threshold.

The Board, at its meeting of July 19, 2012, received a report from the Honourable John W. Morden entitled "Independent Civilian Review Into Matters Relating to the G20 Summit," and received all recommendations in this report for implementation. A number of recommendations in the report relate to "major events" and "critical points" involving the Toronto Police Service. The Board has a responsibility in law to govern and oversee effective policing within its jurisdiction. As such, the Board has the responsibility to inform itself about the relevant operational plans for a major event so that it can ensure adequate and effective policing in the City of Toronto.

As outlined in the Morden Report, and reinforced recently in the report by the Honourable Gloria J. Epstein, "Missing and Missed: Report of the Independent Civilian Review into Missing Person Investigations," the Board must be effectively informed so it can discharge its governance and oversight responsibilities.

The Board is supportive of Chief Ramer's and the Service's plan, and the extensive work that is underway to provide adequate and effective policing services this weekend. The Board also thanks the Members of the Service for their professionalism, and overarching commitment to keeping Toronto residents safe, while ensuring the rights of everyone involved – including those who wish to peacefully assemble and express themselves – are respected.

The Toronto Police Services Board is the civilian body responsible for governing the Toronto Police Service. The Board is responsible for ensuring the provision of adequate and effective police services in the City of Toronto, setting priorities and objectives for the Toronto Police Service, approving the annual police budget and selecting the Chief of Police.

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